

ESTTA Tracking number: **ESTTA757347**

Filing date: **07/08/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92062400
Party	Plaintiff AvalonBay Communities, Inc.
Correspondence Address	BRENT D SOKOL JONES DAY 555 S FLOWER STREET, 50TH FLOOR LOS ANGELES, CA 90071 UNITED STATES bdsokol@jonesday.com, aeraimer@jonesday.com, laprosecu- tion@jonesday.com, lrefinetti@jonesday.com
Submission	Opposition/Response to Motion
Filer's Name	Meredith L. Williams
Filer's e-mail	mwilliams@jonesday.com, bdsokol@jonesday.com, AERaimer@jonesday.com, nytef@jonesday.com
Signature	/Meredith L. Williams/
Date	07/08/2016
Attachments	2016-07-08 Opposition to Motion to Compel.pdf(1199187 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AvalonBay Communities, Inc.,

Petitioner,

v.

Avalon IP Holding Co., LLC,

Registrant.

Cancellation No. 92062400

**PETITIONER’S OPPOSITION TO REGISTRANT’S MOTION TO COMPEL  
FURTHER DISCOVERY RESPONSES AND PRODUCTION OF DOCUMENTS**

In connection with the above-captioned cancellation proceeding, Petitioner AvalonBay Communities, Inc. (“Avalon”) files this Opposition to the Motion to Compel (the “Motion to Compel”) filed by Avalon IP Holding Co., LLC (“Avalon IP”), and respectfully requests that the Trademark Trial and Appeal Board (the “Board”) deny the motion.

**I. INTRODUCTION**

The Motion to Compel filed by Avalon IP did not follow the meet and confer process required by Rule 2.120(e)(1). The Motion to Compel also fails on the merits to warrant the relief it seeks. For each of the Requests for Production (the “Requests”) for which Avalon IP seeks to compel production, Avalon (1) agreed to supplement its production or consider doing so; (2) was advised by Avalon IP that the Request would be given further consideration; or (3) was not informed the Request was an issue. Therefore, Avalon IP’s Motion to Compel came as a complete surprise to Avalon, which understood that the parties were working together to resolve any remaining issues, as evidenced by the parties’ correspondence. Indeed, Avalon IP’s communications provide no indication that any issues would require the Board’s intervention.

Nevertheless, without any warning, and despite the parties' continued efforts to resolve any disputes without the Board's involvement, Avalon IP filed this Motion to Compel.

The Motion to Compel should be denied for several reasons. First, Avalon IP failed to make the required "good faith effort" to resolve the issues raised per Trademark Rule 2.120(e)(1). Despite Avalon's assurance that additional responses would be forthcoming, as well as Avalon IP's promise that it would consider revising a Request, Avalon IP brought this Motion to Compel. Not only is the motion a complete waste of the Board's and the parties' time and resources, but it appears to have been simply and needlessly filed to support Avalon IP's motion for an extension of time, a motion filed to delay resolution of the case. To be clear, Avalon has bent over backwards to accommodate Avalon IP's discovery delays, including agreeing to each deadline extension requested by Avalon IP, and even agreeing to a fourth extension that would apply to all deadlines as long as additional requests to delay the case were not forthcoming. While repeatedly seeking delay, including by this surprise motion, Avalon IP for months has ignored Avalon's repeated offer to streamline the case and its resolution and make it less of a drain on the resources of the Board and the parties through the use of the ACR process.

Importantly, even if Avalon IP's motion were not procedurally deficient, and even if Avalon had refused to produce further documents in connection with all of the Requests—which it has not done—none of Avalon's responses to the Requests is deficient. Rather, Avalon has produced documents in connection therewith or asserted well-founded objections. Avalon IP's Motion to Compel should therefore be denied because 1) it was not based on a "good faith effort" to resolve the issues it raises, and 2) its arguments fail on the merits.

## II. FACTUAL BACKGROUND

For over 20 years, Petitioner Avalon has used the AVALON mark to manage real property, and Avalon has over 250 properties and approximately 3,000 employees nationwide. (Raimer Decl.,<sup>1</sup> ¶¶ 2-3, Exhs. 1 & 2). In contrast, Avalon IP is an IP holding company that purports to use the AVALON mark with two small hotels in Beverly Hills and Palm Springs, respectively, the latter beginning in 2015. (*Id.* at ¶ 3).

On March 3, 2016, Avalon IP served its first set of written discovery requests on Avalon. (Nye Decl.,<sup>2</sup> ¶ 2). Avalon timely responded to these requests on April 4, 2016, providing valid objections for every Request that is the subject of this Motion to Compel. (*Id.* at ¶ 3, Exh. B.) Avalon IP demanded additional responses by a letter dated May 2, 2016 (*id.* at ¶ 4, Exh. C), and Avalon further explained its objections in a letter dated May 24, 2016. (*Id.* at ¶ 5, Exh. D). Counsel for both parties then had a call on June 14, 2016, which both parties summarized in writing. (Nye Decl., ¶¶ 6-8, Exh. F); (Raimer Decl., ¶¶ 6-7, Exh. 4). Tellingly, the Motion to Compel and supporting declaration fail to mention Avalon's letter regarding this call, although it was sent the same day as Avalon IP's email regarding the same call. (Motion to Compel; Nye Decl.) (omitting Raimer Decl., ¶ 7, Exh. 4). As evidenced by both parties' correspondence dated June 15, 2016, the Requests at issue in the Motion to Compel were being addressed: Request No. 7 was not part of the meet and confer process; Avalon IP's counsel indicated that she would further consider and follow up regarding Request No. 8; and for Request Nos. 17-23, Avalon advised that it would consider "supplementing these requests, if possible," and that it would "produce any additional responsive documents" for Request No. 25 that it could "locate after a

---

<sup>1</sup> Cites to Raimer Decl. are to the Declaration of Anna E. Raimer filed in support of this Opposition to Petitioner's Motion to Compel, filed herewith

<sup>2</sup> Cites to Nye Decl. are to the Declaration of Katherine Dennis Nye In Support of Registrant's Motion to Compel, filed at 9 TTABVue 8.

reasonable investigation.” (Raimer Decl., ¶¶ 6-7, Exh. 4). One week later, on June 23, 2016, without any further word from Avalon IP regarding these issues (Raimer Decl., ¶ 8), and while Avalon worked to produce additional documents and awaited Avalon IP’s promised revised Request, Avalon IP filed the present Motion to Compel.

### **III. ARGUMENT**

#### **A. Avalon IP Did Not Make the Required Good Faith Effort to Resolve Outstanding Issues Before Filing the Motion to Compel.**

A motion to compel discovery must be supported by the moving party’s written statement showing that it has made “a good faith effort” to “resolve the issues with the other party, but that the parties were unable to resolve their differences.” *Hot Tamale Mama...and More, LLC*, 110 U.S.P.Q.2d 1080 (T.T.A.B. 2014) (citing Trademark Rule 2.120(e)(1), 37 CFR § 2.120(e)(1); TBMP § 523.02). Since one purpose of this rule is to relieve the Board of resolving motions “where the parties can resolve their discovery disputes if they make a good faith effort to do so,” such good faith efforts should aim at “understanding differences and actually investigating ways in which to resolve the dispute.” *Id.* Thus, where, as here, it is “apparent that the effort toward resolution is incomplete” and there is a “lack of apparent disagreement or impasse,” the movant fails to satisfy the prerequisite good faith effort obligation to bring a motion to compel. *Id.* When Avalon IP filed its Motion to Compel, the parties in this matter had not reached an “impasse”—in fact, they were far from it. Indeed, the parties’ correspondence demonstrates that the issues raised here were resolved or else the subject of ongoing discussions.

#### **1. Avalon Agreed to Supplement Its Production.**

Avalon IP moves to compel a further response to Request No. 25 relating to Avalon’s intent to offer short-term leases *despite Avalon IP’s admission* that “Petitioner has indicated it will produce responsive documents.” (Motion to Compel, p. 5). This admission is in line with

the assertion in Avalon's June 15, 2016 letter that "we will produce any additional responsive documents that we can locate after a reasonable investigation" (Raimer Decl., ¶ 7, Exh. 4), as well as Avalon IP's acknowledgement that same day that Avalon's counsel had agreed "to confer with your client regarding whether there are documents regarding its intent to offer (or consideration of offering) vacation rentals or other short-term leasing arrangements." (Nye Decl., Exh. F). Given that Avalon will produce responsive documents and Avalon IP never even bothered to follow up on this production before filing its motion, Avalon IP's current Motion to Compel on this issue is premature, ill-founded, and improper.

Similarly, for Request Nos. 17-23, Avalon advised during the meet and confer and in its June 15, 2016 correspondence:

Although we continued to dispute the relevancy of this request, especially in connection with Avalon IP's affirmative defenses, I advised that we would discuss with our client supplementing these requests, if possible. We will revert to your shortly on the same.

(Raimer Decl., ¶ 7, Exh. 4, at 5). Avalon IP, for its part, noted that Avalon had agreed "to confirm whether the demand letters produced are sufficient to identify all third party uses of AVALON of which your client is aware." (Nye Decl., Exh. F). No indication was given that this follow-up from Avalon was unsatisfactory or would require Board intervention. Therefore, in connection with these Requests, the parties were engaged in follow-up that would likely "resolve issues by agreement" or "at least narrow and focus the matters in controversy before judicial resolution is sought." *Hot Tamale Mama...and More*, 110 U.S.P.Q.2d at 1081 (internal citations omitted).

**2. The Parties Did Not Meet and Confer on All Requests Subject to the Motion to Compel.**

Avalon IP has raised Request No. 7 relating to Avalon's trademark searches as part of its current Motion to Compel. However, Avalon IP did not list Request No. 7 as an issue for

discussion on the June 14, 2016 call, and the parties did not discuss it. (Nye Decl., Exhs. E & F); (Raimer Decl., ¶¶ 6-7, Exh. 4). Indeed, in Avalon's June 15, 2016 letter, it noted an understanding that the responses to the Requests described in the letter (which did not include Request No. 7) were "the only responses to which that Avalon IP had issues." (Raimer Decl., ¶ 7, Exh. 4, at 5). No response was received from Avalon IP to refute this point. (*Id.* at ¶ 8). Based on the foregoing, Avalon reasonably believed that any issues with its response to Request No. 7 were resolved based on the explanation of its objections to this Request set forth in its May 24, 2016 letter to Avalon IP. (*See* Nye Decl., Exh. D). Avalon IP's failure to meet and confer on this Request shows that it did not make the required "good faith effort" to resolved any remaining issue with this Request. Hence, Avalon IP's Motion to Compel for Request No. 7 should be denied on this basis.

**3. Avalon IP Agreed to Give Further Consideration to a Request Subject to the Motion to Compel.**

For Request No. 8, counsel for Avalon IP specifically advised that she would "think about it" based on the information provided during the meet and confer regarding this Request. (Raimer Decl., ¶ 6). Specifically, as Avalon advised Avalon IP that there was no central repository for the information subject to this request, namely, complaints concerning Avalon's goods and services (Nye Decl., Exh. F), it was understood that Avalon IP would be revising this Request. Indeed, as set forth in Avalon's June 15, 2016 letter:

Fourth, we discussed Avalon IP's request for documents relating to any litigation or complaints (Request for Production No. 8). We advised that there is no central repository for the latter and reemphasized our earlier objection that the former are publicly available. Further, Avalon continues to dispute the relevance of these documents. You indicated that Avalon IP would consider this request further, and we look forward to hearing back from you regarding the same.

(Raimer Decl., ¶ 7, Exh. 4, at 4-5). No further response was received from Avalon IP on this point. (*Id.* at ¶ 8). If Avalon IP disagreed with this understanding—i.e., that Avalon IP would consider revising or withdrawing the request and advise Avalon accordingly—it was Avalon IP’s responsibility to contact Avalon to resolve its perceived dispute before burdening the Board and Avalon with motion practice. A party’s “mere dissatisfaction with the adversary’s answer to an initial inquiry, in itself, does not discharge the duty to undertake a good faith effort to resolve the dispute,” as “the point is to investigate the possibility of resolving the dispute.” *Hot Tamale Mama...and More, LLC*, 110 U.S.P.Q.2d at 1080. Accordingly, Avalon IP again failed to meet the “good faith effort” standard to resolve the dispute on Request No. 8 before filing this Motion to Compel.

The parties’ correspondence on discovery issues speaks for itself—Avalon was diligently working to “amicably resolv[e] any outstanding issues” with Avalon IP (Raimer Decl., ¶ 7, Exh. 4, at 5), when it was ambushed with this Motion to Compel. The present Motion to Compel was brought without the required “good faith effort” to resolve the disputed issues and should therefore be denied.

**B. Avalon’s Discovery Responses Are Not Deficient as Avalon IP Seeks Irrelevant Documents Not Proportional to the Needs of this Case.**

Avalon IP’s Motion to Compel should be denied because Avalon IP failed to follow a good faith effort to resolve discovery issues before filing. But even beyond that, Avalon’s objections to the Requests subject to the Motion to Compel are well-founded. The “right to discovery is not unlimited,” as “[e]ven if the discovery sought by a party is relevant, it will be limited, or not permitted, where, *inter alia*, it is . . . unduly burdensome or obtainable from some other source that is more convenient, less burdensome, or less expensive . . . .” TBMP § 402.02; *see also* Fed. R. Civ. P. 26(b)(1) (discovery must be “proportional to the needs of the case,



considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.”). Avalon has not sought to evade its discovery obligations in this proceeding; rather, Avalon has produced over 6,000 pages of documents thus far. (Raimer Decl., ¶ 5, Exh. 3). Avalon IP is seeking documents from approximately 3,000 employees in over 250 communities throughout the U.S., concerning more than a 20-year period. Further, the additional discovery sought by Avalon IP by its Motion to Compel is neither relevant to the parties' claims or defenses nor proportional to the needs of the case. As such, the Motion to Compel should be denied.

#### **1. Document Requests No. 7(a) and 17 to 23**

Avalon IP seeks to compel production of documents responsive to Request No. 7(a)<sup>3</sup>, regarding “all documents that relate to...[an inquiry] concerning whether any marks similar to any of the AVALON marks asserted in the Cancellation had been or were being used by other parties....” and all documents responsive to Request Nos. 17 to 23 “related to “third-party uses of the term AVALON.” (Motion to Compel, p. 2 & 4). Avalon IP argues that these requests are relevant to Avalon IP's affirmative defense of equitable estoppel, which Avalon IP claims “hinges on” allegations that Avalon “has long tolerated third parties' use of AVALON marks....” (*Id.*).

As mentioned, Avalon IP failed to confer on Request 7 as required by the rules. In any case, third party uses are irrelevant to Avalon IP's affirmative defense of estoppel as it is “a well-settled general rule, in inter partes cases, that laches and estoppel are personal defenses which

---

<sup>3</sup> As the Motion to Compel recites only part (a) of Request No. 7, Avalon understands that only part (a) is at issue.

may not be asserted by a third party . . . who lacks privity with the person entitled to assert the defense.” *In Re Thomas H. Wilson*, 57 U.S.P.Q.2d 1863, n.13 (T.T.A.B. 2001) (internal citations omitted). Thus, any documents relating to searches regarding third party marks or uses by third parties are irrelevant to the affirmative defense of equitable estoppel.

These requests are also incredibly burdensome. Avalon IP is currently seeking to compel documents from approximately 3,000 employees in over 250 communities concerning inquiries over a 20-year period of time. (Raimer Decl., ¶¶ 2-3). These are not reasonable requests, and certainly fall short of the discovery rule that requires discovery requests be proportional to the needs of the case.

Further, even apart from the disproportionate burden, Avalon IP’s Requests seeking evidence of third party uses—not even registrations, but mere uses—would not result in relevant evidence to Avalon IP’s defense of its case, if compelled. Because the relevant comparison for this proceeding is between Avalon IP’s and Avalon’s registered marks, Avalon IP cannot overcome a likelihood of confusion with its own mark “by pointing to other registrations and arguing that they are as similar to the cited registration as is [Avalon IP’s] mark.” 3 McCarthy on Trademarks and Unfair Competition § 19:126.50 (4th ed.) (citing *In re Chica, Inc.*, 84 U.S.P.Q.2d 1845, 2007 WL 2344668 (T.T.A.B. 2007). *Accord: In re Max Capital Group Ltd.*, 93 U.S.P.Q.2d 1243, 1248, 2010 WL 22358 (T.T.A.B. 2010) (a third party registration cannot justify adding a confusingly similar mark to the register)). Avalon IP referenced no authority for its position that these Requests are relevant and proportional to the needs of the case<sup>4</sup> prior to bringing this motion or even in its current motion.

---

<sup>4</sup> Avalon IP limited Request Nos. 17-23 to documents created October 29, 2008, its filing date. Showing little regard for the meet and confer process in filing this motion, Avalon IP now seeks to compel over 20 years worth of records from approximately 3,000 employees located in over 250 locations.

For these reasons, Avalon IP fails to support how under the circumstances all documents that relate to whether Avalon tolerated third party uses or registrations is relevant to this cancellation action or proportionate to the needs of the case.

## **2. Document Request No. 8**

Avalon IP's Request No. 8 seeks documents related to "perceived standards of quality of any products or services offered by Petitioner," documents related to "litigation involving any products or services offered" under the marks, and "any complaints concerning any products or services offered at any time by Petitioner," which Avalon objected to, among other reasons, as irrelevant, overly broad and unduly burdensome, publicly available, vague and ambiguous, and not proportional to the needs of the case. (Nye Decl., Exh. B).

Avalon IP asserts that the requested documents is that complaints, should they exist in a large volume, would "belie[] any claim of damage." (Motion to Compel, p. 3). Unsurprisingly, no case law is provided to support such a claim. "There is no requirement that actual damage be pleaded and proved in order to establish standing or to prevail in an opposition or cancellation proceeding." TBMP § 303.03. Furthermore, even if Avalon's "reputation...is tarnished by its own poor quality services"—a theory belied by the documents produced already in this case, including the many awards received by Avalon—a tarnished reputation does not equate to zero goodwill in a party's trademarks, nor does it obviate harm resulting from a likelihood of confusion.

Notably, Avalon IP fails to address any of the objections set forth by Avalon to this Request. For example, with respect to Request 8(a), Avalon IP has not sought to clarify the meaning of "perceived standards of quality of any products or services offered by Petitioner," despite Avalon's repeated objections that such a phrase is vague and ambiguous. (Nye Decl., ¶¶

3 & 5, Exhs. B & D). Without information as to the meaning of this phrase, Avalon is unable to respond.

Avalon IP has similarly failed, despite Avalon's objections to Request 8(b), to explain why it cannot obtain publicly available information regarding Avalon's litigation, or to limit the overly broad request for "all documents" relating to "any litigation involving any products or services" offered under the AVALON marks. (Motion to Compel, p. 3). As Avalon has explained: "This request necessarily sweeps in hundreds of thousands of documents from hundreds of lawsuits that may 'involv[e]' an Avalon property—such as landlord-tenant, personal injury, or employment-related litigation—but have no connection to Petitioner's use of its trademarks or any fact that could be relevant to this cancellation proceeding." (Nye Decl., Exh. B).

Additionally, in connection with Request No. 8(c) for "any complaints concerning any products or services offered at any time by Petitioner," Avalon has advised that there is no central repository for such complaints (Nye Decl., Exh. F), making any production responsive to such a request, if even remotely relevant, unduly burdensome and not proportional to the needs of the case. Despite the assertion that Avalon IP would "think about" this request further (Raimer Decl., ¶ 6), Avalon IP has made no attempt to narrow this overly broad and unduly burdensome request, nor has it explained how it is relevant, e.g., how a complaint received ten years ago by a single tenant at one of Avalon's 250 communities about a clogged toilet would have any bearing on this dispute.

### **3. Document Request No. 25<sup>5</sup>**

As discussed more fully above, the Motion to Compel admits that Avalon's "most recent correspondence" of June 15, 2016 resolved Avalon IP's further demands regarding Request No.

---

<sup>5</sup> This Request was erroneously numbered by Avalon IP as Request No. 23. (Motion to Compel, p. 5).

25. (Motion to Compel, p. 5). To the extent Avalon IP had concerns as to the progress and timing of this production, Avalon IP should have addressed those concerns to Avalon in the first instance. Instead, a mere eight days after Avalon advised it would produce responsive documents, and without any further inquiry or demand to Avalon regarding its agreed-upon review and production, Avalon IP filed this Motion, complaining that “no production has yet been made.” (*Id.*) It is unclear what relief Avalon IP seeks on this front, as it claims Avalon has already “respond[ed] in full” to this Request. In any event, Avalon IP’s Motion to Compel needlessly seeks the Board’s intervention, wasting the Board’s and Avalon’s time and resources.

#### **IV. CONCLUSION**

Avalon IP failed to make a “good faith effort” to resolve the issues raised in its Motion to Compel, address Avalon’s objections or burden, or demonstrate that under the circumstances Avalon’s discovery responses are deficient. For all of the foregoing reasons, Avalon respectfully requests that the Board deny Avalon IP’s Motion to Compel.

Respectfully submitted,

Dated: July 8, 2016

By: 

---

Anna E. Raimer  
JONES DAY  
717 Texas Avenue, Suite 3300  
Houston, TX 77002  
(832) 239-3786  
aeraimer@jonesday.com

*Attorneys for Petitioner  
AvalonBay Communities, Inc.*

**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the documents entitled Petitioner's Opposition to Registrant's Motion to Compel and the Declaration of Anna E. Raimer in Support of the Opposition have been served upon Avalon IP this 8th day of July, 2016, via Federal Express, to Registrant's counsel:

LEE J. EULGEN

NEAL, GERBER & EISENBERG LLP

2 N. LASALLE ST., SUITE 1700

CHICAGO, IL 60602

A courtesy copy was also served via e-mail at knye@ngelaw.com, leulgen@ngelaw.com, and temanuelson@ngelaw.com.

Dated: July 8, 2016

Respectfully submitted,

By: Meredith Williams

Meredith L. Williams  
JONES DAY

Telephone: (949) 553-7529

Facsimile: (949) 553-7539

Email: mwilliams@jonesday.com

*Attorneys for AvalonBay Communities, Inc.*

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AvalonBay Communities, Inc.,

Petitioner,

v.

Avalon IP Holding Co., LLC,

Registrant.

Cancellation No. 92062400

**DECLARATION OF ANNA E. RAIMER IN SUPPORT OF  
PETITIONER’S OPPOSITION TO REGISTRANT’S MOTION TO COMPEL  
FURTHER DISCOVERY RESPONSES AND PRODUCTION OF DOCUMENTS**

I, Anna E. Raimer, hereby declare and state as follows:

1. I am a Partner at the law firm of Jones Day, counsel to Petitioner AvalonBay Communities, Inc. (“Avalon”) in the above-captioned action, and I have personal knowledge of the facts stated in this declaration.

2. As stated in Avalon’s most recent 10-K filing with the Securities and Exchange Commission (“SEC”), Avalon had 2,981 employees as of January 31, 2016. A true and correct copy of the relevant excerpt from that filing (as produced to Avalon IP Holding Co., LLC (“Avalon IP”)) is attached as Exhibit 1.

3. As stated in Avalon’s most recent 10-Q filing with the SEC, Avalon had an interest in 258 operating apartment communities containing 75,379 apartment homes in 10 states and the District of Columbia as of March 31, 2016. A true and correct copy of the relevant excerpt from that filing (which is publicly available) is attached as Exhibit 2.

4. Based on my review of Avalon IP’s pleadings and publicly available websites, Avalon IP is an IP holding company that purports to use the AVALON mark with two small hotels in Beverly Hills and Palm Springs, respectively, the latter beginning in 2015.

5. Avalon has made three document productions to Avalon IP, totaling over 6,000 pages: (1) on April 12, 2016, Avalon produced documents bates numbered AVA 000001 – AVA 004142; (2) on May 10, 2016, Avalon produced additional documents bates numbered AVA 004143 – AVA 006229; and (3) on June 8, 2016, Avalon produced additional documents bates numbered AVA 006230 – AVA 006385. True and correct copies of enclosure letters attesting to the same are attached hereto as Exhibit 3.

6. On June 14, 2016, I had a call with counsel for Avalon IP, Katherine Nye, to discuss Avalon's discovery responses. We did not discuss Avalon's response to Request for Production No. 7. In discussing Avalon's response to Request for Production No. 8, I advised Ms. Nye that there was no central repository for the complaints that were the subject of this request. Ms. Nye responded that, in light of this information, she would "think about it." I understood that Ms. Nye would be either revising or withdrawing the request based on this information.

7. I sent a letter on June 15, 2016, which memorialized the parties' June 14, 2016 call. A true and correct copy of that letter (and the cover email to that letter) is attached as Exhibit 4.

8. On June 23, 2016, Avalon IP filed its Motion for Extension and Motion to Compel. Avalon IP provided no prior notice before filing these motions. Following the parties' June 15, 2016 correspondence, Avalon did not receive any further communication from Avalon IP regarding the discovery issues raised in the Motion to Compel.



I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 8th day of July, 2016 in Houston, Texas.



---

Anna E. Raimer

# **EXHIBIT 1**

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORM 10-K**

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the fiscal year ended December 31, 2015**

**Commission file number 1-12672**

**AVALONBAY COMMUNITIES, INC.**  
(Exact name of registrant as specified in its charter)

**Maryland**  
(State or other jurisdiction of  
incorporation or organization)

**77-0404318**  
(I.R.S. Employer  
Identification No.)

**Ballston Tower**  
**671 N. Glebe Rd, Suite 800**  
**Arlington, Virginia 22203**  
(Address of principal executive offices, including zip code)

**(703) 329-6300**  
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

(Title of each class)	(Name of each exchange on which registered)
Common Stock, par value \$.01 per share	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding twelve (12) months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☒      Accelerated filer ☐      Non-accelerated filer ☐      Smaller reporting company ☐  
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act).

Yes ☐ No ☒

The aggregate market value of the registrant's Common Stock, par value \$.01 per share, held by nonaffiliates of the registrant, as of June 30, 2015 was \$21,847,735,762.

The number of shares of the registrant's Common Stock, par value \$.01 per share, outstanding as of January 29, 2016 was 137,002,607.

**Documents Incorporated by Reference**

Portions of AvalonBay Communities, Inc.'s Proxy Statement for the 2016 annual meeting of stockholders, a definitive copy of which will be filed with the SEC within 120 days after the year end of the year covered by this Form 10-K, are incorporated by reference herein as portions of Part III of this Form 10-K.

[Table of Contents](#)*Environmental and Related Matters*

As a current or prior owner, operator and developer of real estate, we are subject to various federal, state and local environmental laws, regulations and ordinances and also could be liable to third parties resulting from environmental contamination or noncompliance at our communities. For some development communities we undertake extensive environmental remediation to prepare the site for construction, which could be a significant portion of our total construction cost. Environmental remediation efforts could expose us to possible liabilities for accidents or improper handling of contaminated materials during construction. These and other risks related to environmental matters are described in more detail in Item 1A. "Risk Factors."

We believe that more government regulation of energy use, along with a greater focus on environmental protection, may, over time, have a significant impact on urban growth patterns. If changes in zoning to encourage greater density and proximity to mass transit do occur, such changes could benefit multifamily housing and those companies with a competency in high-density development. However, there can be no assurance as to whether or when such changes in regulations or zoning will occur or, if they do occur, whether the multifamily industry or the Company will benefit from such changes.

*Other Information*

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any document we file at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. You may call the SEC at 1-202-551-8090 for further information on the operation of the Public Reference Room. Our SEC filings are also available to the public from the SEC's website at [www.sec.gov](http://www.sec.gov).

We maintain a website at [www.avalonbay.com](http://www.avalonbay.com). Our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports, filed or furnished pursuant to the Securities Exchange Act of 1934 are available free of charge in the "Investor Relations" section of our website as soon as reasonably practicable after the reports are filed with or furnished to the SEC. In addition, the charters of our Board's Nominating and Corporate Governance Committee, Audit Committee and Compensation Committee, as well as our Director Independence Standards, Corporate Governance Guidelines, Code of Conduct, Policy Regarding Shareholder Rights Agreements, Policy Regarding Shareholder Approval of Future Severance Agreements, Executive Stock Ownership Guidelines, Policy on Political Contributions and Government Relations, and Policy on Recoupment of Incentive Compensation, are available free of charge in that section of our website or by writing to AvalonBay Communities, Inc., Ballston Tower, Suite 800, 671 N. Glebe Rd., Arlington, Virginia 22203, Attention: Chief Financial Officer. To the extent required by the rules of the SEC and the NYSE, we will disclose amendments and waivers relating to these documents in the same place on our website.

We were incorporated under the laws of the State of California in 1978. In 1995, we reincorporated in the State of Maryland and have been focused on the ownership and operation of apartment communities since that time. As of January 31, 2016, we had 2,981 employees.

## **EXHIBIT 2**

10-Q 1 q1201610-q.htm 10-Q

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 10-Q**

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d)**  
**OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended March 31, 2016

Commission file number 1-12672

**AVALONBAY COMMUNITIES, INC.**

(Exact name of registrant as specified in its charter)

**Maryland**

(State or other jurisdiction of  
incorporation or organization)

**77-0404318**

(I.R.S. Employer  
Identification No.)

**Ballston Tower**

**671 N. Glebe Rd, Suite 800**

**Arlington, Virginia 22203**

(Address of principal executive offices, including zip code)

**(703) 329-6300**

(Registrant's telephone number, including area code)

(Former name, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding twelve (12) months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past ninety (90) days.

Yes ☒

No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (Section 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes ☒

No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☒

Accelerated filer ☐

Non-accelerated filer (Do not check if a smaller reporting company) ☐

Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act).

Yes ☐

No ☒

[Table of Contents](#)

AVALONBAY COMMUNITIES, INC.  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(unaudited)

1. Organization, Basis of Presentation and Significant Accounting Policies

*Organization and Basis of Presentation*

AvalonBay Communities, Inc. (the “Company,” which term, unless the context otherwise requires, refers to AvalonBay Communities, Inc. together with its subsidiaries), is a Maryland corporation that has elected to be treated as a real estate investment trust (“REIT”) for federal income tax purposes under the Internal Revenue Code of 1986 (the “Code”). The Company focuses on the development, redevelopment, acquisition, ownership and operation of multifamily communities primarily in New England, the New York/New Jersey metro area, the Mid-Atlantic, the Pacific Northwest, and Northern and Southern California.

At March 31, 2016, the Company owned or held a direct or indirect ownership interest in 258 operating apartment communities containing 75,379 apartment homes in 10 states and the District of Columbia, of which eleven communities containing 3,429 apartment homes were under reconstruction. In addition, the Company owned or held a direct or indirect interest in 24 communities under construction that are expected to contain an aggregate of 7,670 apartment homes when completed. The Company also owned or held a direct or indirect ownership interest in land or rights to land on which the Company expects to develop an additional 30 communities that, if developed as expected, will contain an estimated 9,745 apartment homes.

The interim unaudited financial statements have been prepared in accordance with U.S. generally accepted accounting principles (“GAAP”) for interim financial information and in conjunction with the rules and regulations of the Securities and Exchange Commission (“SEC”). Certain information and footnote disclosures normally included in financial statements required by GAAP have been condensed or omitted pursuant to such rules and regulations. These unaudited financial statements should be read in conjunction with the financial statements and notes included in the Company’s 2015 Annual Report on Form 10-K. The results of operations for the three months ended March 31, 2016 are not necessarily indicative of the operating results for the full year. Management believes the disclosures are adequate to ensure the information presented is not misleading. In the opinion of management, all adjustments and eliminations, consisting only of normal, recurring adjustments necessary for a fair presentation of the financial statements for the interim periods, have been included.

Capitalized terms used without definition have meanings provided elsewhere in this Form 10-Q.

*Earnings per Common Share*

Basic earnings per share is computed by dividing net income attributable to common stockholders by the weighted average number of shares outstanding during the period. All outstanding unvested restricted share awards contain rights to non-forfeitable dividends and participate in undistributed earnings with common shareholders and, accordingly, are considered participating securities that are included in the two-class method of computing basic earnings per share (“EPS”). Both the unvested restricted shares and other potentially dilutive common shares, and the related impact to earnings, are considered when calculating earnings per share on a diluted basis. The Company’s earnings per common share are determined as follows (dollars in thousands, except per share data):

## **EXHIBIT 3**



# JONES DAY

3161 MICHELSON DRIVE • SUITE 800 • IRVINE, CALIFORNIA 92612.4408  
TELEPHONE: +1.949.851.3939 • FACSIMILE: +1.949.553.7539

Direct Number: (949) 553-7529  
MWilliams@JonesDay.com

April 12, 2016

VIA UPS MAIL (COPY VIA EMAIL)

Lee J. Eulgen  
Neal, Gerber & Eisenberg LLP  
2 N. LaSalle St., Suite 1700  
Chicago, IL 60602

Re: AvalonBay Communities, Inc. v. Avalon IP Holding Co.,  
Cancellation No. 92062400

Dear Mr. Eulgen:

This letter confirms that we have produced to you, via encrypted CD accompanying this letter, documents Bates numbered AVA 000001 through AVA 004142. Certain of these documents have been designated as "Confidential" (see AVA 000701 through 000703). Please maintain the strict confidentiality of these documents. This production is made without prejudice to Petitioner's rights, all of which are expressly reserved.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Meredith L. Williams

Encl. Production CD (file name "AVA 000001 – AVA 004142").

# JONES DAY

3161 MICHELSON DRIVE • SUITE 800 • IRVINE, CALIFORNIA 92612-4408  
TELEPHONE: +1.949.851.3939 • FACSIMILE: +1.949.553.7539

Direct Number: (949) 553-7529  
MWilliams@JonesDay.com

May 10, 2016

VIA UPS MAIL (COPY VIA EMAIL)

Lee J. Eulgen  
Neal, Gerber & Eisenberg LLP  
2 N. LaSalle St., Suite 1700  
Chicago, IL 60602

Re: AvalonBay Communities, Inc. v. Avalon IP Holding Co., LLC,  
Cancellation No. 92062400

Dear Mr. Eulgen:

This letter confirms that we have produced to you, via encrypted CD accompanying this letter, documents Bates numbered AVA 004143 through AVA 006229. This production is made without prejudice to Petitioner's rights, all of which are expressly reserved.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Meredith L. Williams

Encl. Production CD (file name "AVA 004143 – AVA 006229").

# JONES DAY

3161 MICHELSON DRIVE • SUITE 800 • IRVINE, CALIFORNIA 92612.4408  
TELEPHONE: +1.949.851.3939 • FACSIMILE: +1.949.553.7539

Direct Number: (949) 553-7529  
MWilliams@JonesDay.com

June 8, 2016

## VIA UPS MAIL (COPY VIA EMAIL)

Lee J. Eulgen  
Neal, Gerber & Eisenberg LLP  
2 N. LaSalle St., Suite 1700  
Chicago, IL 60602

Re: AvalonBay Communities, Inc. v. Avalon IP Holding Co., LLC,  
Cancellation No. 92062400

Dear Mr. Eulgen:

This letter confirms that we have produced to you, via encrypted CD accompanying this letter, documents Bates numbered AVA 006230 through AVA 006385. Certain of these documents have been designated as "Attorneys' Eyes Only" (see AVA 006232 through 006344). Please maintain the strict confidentiality of these documents. This production is made without prejudice to Petitioner's rights, all of which are expressly reserved.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Meredith L. Williams

Encl. Production CD (file name "AVA 006230 – AVA 006385").

# **EXHIBIT 4**



**AvalonBay Communities, Inc. v. Avalon IP Holding Co., LLC; Cancellation No. 92062400**

**Anna E Raimer** to: Nye, Katherine Dennis

06/15/2016 04:25 PM

33786

Cc: Brent D Sokol, "Eulgen, Lee J."

Bcc: Meredith L Williams

---

History: This message has been forwarded.

Kate,

Please see the attached letter.

Kind regards,  
Anna

Anna E. Raimer ([bio](#))

Partner

[JONES DAY® - One Firm Worldwide<sup>SM</sup>](#)

717 Texas Avenue, Suite 3300

Houston, TX 77002

Office +1.832.239.3786

Cell +1.512.632.7650

[aeraimer@jonesday.com](mailto:aeraimer@jonesday.com)



- JD\_1501187488\_2.pdf

=====

This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

=====

# JONES DAY

717 TEXAS • SUITE 3300 • HOUSTON, TEXAS 77002.2712  
TELEPHONE: +1.832.239.3939 • FACSIMILE: +1.832.239.3600

DIRECT NUMBER: (832) 239-3786  
AERAIMER@JONESDAY.COM

June 15, 2016

VIA EMAIL (KNYE@NGELAW.COM)

Katherine Dennis Nye  
Neal, Gerber & Eisenberg LLP  
2 N. LaSalle St., Suite 1700  
Chicago, IL 60602

Re: *AvalonBay Communities, Inc. v. Avalon IP Holding Co., LLC*,  
Cancellation No. 92062400

Dear Ms. Nye:

We received your letter dated June 3, 2016, responding to our May 10, 2016 letter regarding the deficiencies in Avalon IP Holding Co., LLC's ("Avalon IP's") responses and objections to the First Set of Interrogatories, First Set of Requests for Admission, and First Set of Requests for Production of Documents served by AvalonBay Communities, Inc. ("AvalonBay"). We are also in receipt of Avalon IP's responses and objections to AvalonBay's Second Set of Requests for Admission. This letter addresses the foregoing discovery responses, as well as memorializing the representations from our telephone call yesterday.

## **I. Response to June 3, 2016 Letter**

We appreciate your assurance that Avalon IP's "reasonable inquiry" included an inquiry into the knowledge of its predecessor in interest, Avalon Hotels, L.L.C. Given your statement that "there is information to which [Avalon IP] does not have access as a result of its status as a later purchaser of the AVALON mark and related goodwill," we understand that you will not later produce or rely on documents or information from Avalon Hotels, L.L.C. that you have not produced to date. Please confirm this understanding, or else identify any additional documents or information not yet produced in discovery by no later than June 22, 2016.

### **A. Interrogatories**

AvalonBay's Interrogatory No. 7, requesting "the annual dollar and unit volume of Registrant's sales in the United States of services under the Avalon Mark from the first sale of each type of service to the present" (and related Document Request Nos. 22 and 23), seek sales information, which is appropriate discovery per the Trademark Trial and Appeal Board. *Sunkist Growers, Inc.*, 229 U.S.P.Q. 147 (T.T.A.B. 1985) (internal citations omitted):

The Board has held that annual sales and advertising figures of recent years given in round numbers for specific goods bearing the involved mark(s) are proper matters for discovery since the information may well have a bearing upon the issues in an opposition or cancellation proceeding.

Based on this case law, please advise whether an amended response will be provided.

We appreciate your willingness to provide supplemental responses to Interrogatory Nos. 13, 14, 20, and 21. Please also advise whether Avalon IP will amend its response to Interrogatory No. 24, providing facts to support its denial that Avalon IP's services are closely related to those offered by AvalonBay.

#### **B. Requests for Admission**

We also appreciate your agreement to provide supplemental responses to Request for Admission Nos. 1 and 3 through 16 (asking Avalon IP to admit that AvalonBay owns the relevant U.S. Trademarks alleged in the Petition), as well as for clarifying Avalon IP's responses to Request for Admission No. 18 and Interrogatory No. 23. Please provide the date by which we may expect to receive the supplemental responses.

#### **C. Requests for Production of Documents**

As to AvalonBay's Request for Production No. 7, AvalonBay is willing to narrow its request as you suggest to seek only "the price Registrant paid to acquire the Avalon Mark." Accordingly, please review with your client as you indicated and supplement this response.

We also acknowledge Avalon IP's confirmation that it is not withholding any responsive documents based on its objections to Request for Production Nos. 2, 3, 18, and 38 through 40. With respect to Request for Production Nos. 2 and 3, relating to the date of first use of Avalon IP's mark, we understand your response to mean that Avalon IP does not have and will not seek out or rely on any documents outside of those "that are in the public domain or public record," i.e., outside of the registration documents already produced. If this understanding is incorrect, please immediately identify what additional documents you intend to procure (from third party discovery or otherwise) responsive to these requests, and produce those documents by no later than June 22, 2016.

As to Request for Production Nos. 18 and 38 through 40, Avalon IP again averred that it "is not withholding any documents on the basis of its objections" but also that "its investigation is ongoing" (unlike its responses to Request Nos. 2 and 3). These requests seek any documents "upon which you rely for any defense," "that support and/or rebut an allegation contained in the

Petition,” and that support or controvert “statements contained in” and “affirmative defenses pled in Registrant’s Answer.” If Avalon IP intends to supplement its current production, please clarify what additional documents you intend to procure responsive to these requests, and produce those documents. Given the upcoming deadline of the close of discovery, Avalon IP’s investigation should similarly be coming to a close.

Finally, Avalon IP’s responses to Request for Production Nos. 12 and 33 agree to produce documents based on different descriptions than those sought by the requests. That is, Request No. 12 seeks: “All documents on which you will rely to support any claim that Registrant’s use of the Avalon Mark is sufficiently distinct from AvalonBay’s use of the AvalonBay Marks so as to obviate any likelihood of confusion,” but Avalon IP agreed to produce “representative documents showing the manner of its use of the Avalon Mark.” Please clarify whether Avalon IP is currently withholding documents responsive to the balance of this request, and if not, whether Avalon anticipates obtaining, producing, and/or relying on additional documents. Likewise, Request No. 33 seeks: “Documents sufficient to identify all licenses, assignments, consents, or agreements taken or given by Registrant” relating to the Avalon Mark, but Avalon IP only stated it will produce “the agreement by which it obtained rights in the Avalon Mark.” Please immediately clarify whether Avalon IP is currently withholding other licenses, assignments, consents, or agreements relating to the Avalon Mark.

## **II. Response to June 3, 2016 Letter**

In response to AvalonBay’s Second Set of Requests for Admission (Nos. 35 through 55), Avalon IP denied each and every request. That is, Avalon IP denied that it lacks knowledge or information (outside of the relevant registration, application, and publicly available documents filed therewith) relating to early uses of the mark Avalon prior to its acquisition by Avalon IP.

These denials are puzzling in light of Avalon IP’s production to date—which does not provide evidence of early use—and its response to AvalonBay’s Interrogatory No. 13, asking it to “Identify and describe the facts relating to the date and manner in which the Avalon Mark was first used . . . ,” as Avalon IP stated that “after reasonable inquiry, [Registrant] is without knowledge or information sufficient to respond to this Interrogatory.” We trust that in amending this response and similar responses as agreed, Avalon IP will provide whatever information supports Avalon IP’s belief that the first use of the Avalon Mark in connection with each of the services identified was prior to its March 2015 acquisition.

Relatedly, Avalon IP objected to AvalonBay’s Request for Production Nos. 2 and 3—requesting documents “sufficient to show the dates of first use” and “sufficient to support the dates of first use in interstate commerce of the Avalon Mark” for each service—by objecting “on the grounds that it seeks documents *in the public domain or public record*, already in the possession, custody or control of Petitioner, or equally available to Petitioner.” (emphasis



added). Given your recent statement that Registrant is not withholding any responsive documents on the basis of this objection—i.e., Avalon IP is not withholding any documents available in the public domain—please clarify what non-publicly available documents, if any, Avalon IP has and produce those documents immediately.

Avalon IP's sweeping denials of AvalonBay's Second Set of Requests for Admission are deeply concerning, as Avalon IP's responses, taken together, indicate that responsive material has been withheld as to first use. We hope that Avalon IP will clarify and revise its responses promptly, and by no later than June 22, 2016. If not, AvalonBay will need to pursue motion practice to obtain sufficient answers to understand Avalon IP's basis for such denials, or notice your deposition with respect to these responses as you are the signatory of the same.

### **III. June 14, 2016 Meet and Confer Call**

With respect to our call yesterday regarding Avalon IP's alleged issues with AvalonBay's discovery responses, we made agreements and representations on a number of issues.

First, Avalon IP requested a 60-day extension of all remaining deadlines. After conferring with AvalonBay regarding the same, our client is willing to agree to the proposed 60-day extension. However, such consent is dependent on Avalon IP's agreement that no further extensions of the new deadlines will be requested or observed except by further agreement of the parties in this proceeding. Please confirm your agreement to these terms.

Second, it was requested that AvalonBay formally supplement its responses to Request for Admission Nos. 1 and 2 in line with the proposal in our previous letter. We have done so, and we will serve the responses once the verification is signed.

Third, in terms of Avalon IP's request related to the geographic scope of the use of AvalonBay's services (Interrogatory No. 4(b)), you indicated that it would resolve Avalon IP's issue with this response if AvalonBay produced a complete list of its communities. After reviewing the production, we confirm that AvalonBay has produced such lists in various documents, including the following: the community list webpages available at <http://www.avaloncommunities.com/community-list>, (AVA 000061 and 000068-95); apartments for rent in each state and in the District of Columbia (AVA 000096-342); AvalonBay's most recent 10-K, including the total numbers of communities (AVA 000473) and listing out the various kinds of communities (AVA 000475-487; 00572-582); and the list of all AvalonBay's subsidiaries/affiliates in the Bloomberg Company report (AVA 000604-618). Please confirm that the foregoing satisfies any outstanding issue with respect to this discovery request.

Fourth, we discussed Avalon IP's request for documents relating to any litigation or complaints (Request for Production No. 8). We advised that there is no central repository for the

Katherine Dennis Nye  
June 15, 2016  
Page 5

latter and reemphasized our earlier objection that the former are publicly available. Further, AvalonBay continues to dispute the relevance of these documents. You indicated that Avalon IP would consider this request further, and we look forward to hearing back from you regarding the same.

Fifth, we discussed Avalon IP's Requests for Production Nos. 17 through 23, dealing with third party use. Although we continued to dispute the relevancy of this request, especially in connection with Avalon IP's affirmative defenses, I advised that we would discuss with our client supplementing these requests, if possible. We will revert to you shortly on the same.

Sixth, in connection with Request for Production No. 25 regarding AvalonBay's intent to offer "vacation rentals or other short-term leasing arrangements," we will produce any additional responsive documents that we can locate after a reasonable investigation.

Following our discussion of the foregoing discovery requests, which we understand to be the only responses to which that Avalon IP had issues, you indicated that Avalon IP will produce supplemental discovery responses by the end of the week or early next week. We look forward to receiving these responses.

I also presented the possibility of engaging in Accelerated Case Resolution under the Board's procedure, such as a stipulation that summary judgment motions be treated as the final briefs in the case. You advised that you would take this proposal to your client to see if there was any interest in doing so.

Thank you for your cooperation in this meet and confer process, and we look forward to amicably resolving any outstanding issues with you going forward.

Very Truly Yours,



Anna E. Raimer